IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 924 OF 2006

IN

REGULAR CIVIL APPEAL NO. 175 OF 2004

IN

REGULAR CIVIL SUIT NO. 867 OF 1993

M/s Art Rubber Industries Ltd. .... Appellant

Vs.

Nashik Municipal Corporation .... Respondent
Nashik

Mr. G.S. Godbole for the Appellant.

CORAM : A.S. OKA, J.
DATE : 13TH JULY, 2007

P.C.

1) Submissions of the learned Counsel appearing for the Appellant were heard yesterday. The Appellant is the original Plaintiff and the Respondent-Municipal Corporation is the only Defendant. The Respondent-Corporation has been established under the Bombay Provincial Municipal Corporations Act, 1949.

2) The Appellant- Company manufactures tubes and flaps which require raw material like rubber,

valves and carbon block. The Appellant is having a Manufacturing Unit in the Industrial Estate at Ambad, Nashik. The Appellant Company has been granted a Current Account Facility by the Respondent- Corporation for payment of Octroi. According to the case of Appellant-Plaintiff, on raw material like rubber, valve and carbon block, octroi at a concessional rate of 1.20% is being recovered from the Appellant- Plaintiff. By a Notice dated 3rd December 1992, the Respondent-Corporation called upon the Appellant to pay a sum of Rs. 2,15,905.13 towards difference in Octroi on goods imported during the period from April 1998 to March 1999 at the rate of 2.80%. After receipt of said notice, a suit for declaration was filed by the Appellant claiming a declaration that Respondent- Corporation is not entitled to recover Octroi on raw material imported by the Appellant at the rate of 2.80%. A perpetual injunction was also claimed restraining the Respondent from recovering the amount on the basis of the demand. The said suit was contested by Respondent - Corporation on various grounds. The said suit was dismissed by the Trial Court and in the Appeal preferred by the Appellant, the learned District Judge has confirmed the decree of the Trial Court.

3) The learned Counsel for the Appellant pointed out that the suit has been erroneously dismissed on the ground that for availing the Current Account facility, a declaration in Form No. 14 was required to be made by the Appellant. He submitted that the Appellate Court has committed an error by applying the decision of the Apex Court in the case of Indian Aluminium Company Limited Vs. Thane Municipal Corporation, 1992 SUPP (1) SCC 480. He submitted that the said decision will apply to a case where a concession in octroi duty is claimed.

4) The learned Counsel for the Appellant further submitted that the demand made by the Respondent-Corporation was barred by law of limitation. He submitted that the first demand was made in September 1992 for the period from April 1988 to March 1999. He submitted that on the day on which the demand was made, the claim of the Respondent -Corporation was barred by law of limitation.

5) I have considered the submissions. It is not in dispute that the parties were at the relevant time governed by Maharashtra Municipalities (Octroi) Rules, 1968 (hereinafter referred to as ‘the said Rules of 1968). Rule 14

(1) of the said Rules of 1968 reads thus :

> "14. [(1) on arrival of any dutiable goods at the Octroi Naka, the Octroi Officer shall call upon the importer or the driver of the vehicle or conveyance of the person in charge of the pack-animal or other person bringing the goods-
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> (a) to make a declaration in Form I, in respect of the goods imported for consumption use or sale in the municipal area, unless the importer or as the case may be, the driver or the person in charge is prepared to accept the assessment made by the Octroi Officer and pay the amount of octroi as so assessed.
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> (b) to make a declaration-cum-application in Form 2, in respect of the goods intended for immediate export, if considered necessary, for the purpose of determining the amount deposit to be taken in accordance with the scale fixed under clause (b) of sub-rule (1) of Rule 5 and for entering the particulars in the written permission-cum-transit pass, if any, to be granted under Rule 18;
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> (c) to present an application in Form 3 in respect of the goods intended for temporary deterntion in the Bonded Warehouse, if any, maintained by the Council and eventual export;
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> (d) to make a declaration in Form 4, in respect of the goods intended for temporary detention with himself and eventual export;
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> (e) to make a declaration in Form 5, in respect of the goods imported by, or on behalf of, any person, mercantile firm or body which has been permitted by the Council to keep an account current under Section 142;
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> (f) to give description, number, quantity, weight and measure of the goods and where octroi is leviable ad-valorem, to state the value of the goods;

> Provided that where the goods are imported by, or on behalf of, the occupier of a factory from whom the Council has accepted a lump sum in advance under sub-section (2) of Section 145, the Octroi Officer shall allow such goods to pass, without requiring the importer to make any of the aforementioned declarations, or payment of octroi."

6) The submission of the learned Counsel for the Appellant is that the Apex Court in the case of Indian Aluminium Company Ltd. **(supra)** was not dealing with clause (e) of Rule 14(1) referred to above and the Apex Court was concerned with a claim for payment of octroi at a lower rate as per Rule 4(2) of the said Rules of 1968. What was argued before the Apex Court was that the declaration contemplated as per Rule 14 was a procedural requirement and therefore such a requirement cannot be held to be a mandatory requirement. While dealing with this submission, the Apex Court held thus :

> "The declaration contemplated in Form 14 is to the effect that the goods imported shall not be used for any other purpose for sale or otherwise etc. **It can thus be seen that an incentive is sought to be given to such entrepreneurs by such concession if the raw material which is imported is also utilised in the industrial undertaking without selling or disposing of otherwise. That being the object a verification at the relevant time by the octroi authorities becomes very much necessary before a concession can be given. In the absence of filing such a declaration in the required**

> **Form 14, there is no opportunity for the authorities to verify. Therefore the petitioner company has definitely failed to fulfil an important obligation under the law though procedural**. The learned counsel, however, submitted that even now the authorities can verify the necessary records which are audited and submitted to the authorities and find out whether the material was used in its own undertaking or not. We do not think we can accede to this contention. Having failed to file the necessary declaration he cannot now turn around and ask the authorities to make a verification of some records. The verification at the time when the raw material was still there is entirely different from a verification at a belated stage after it has ceased to be there. May be that the raw material was used in the industrial undertaking as claimed by the petitioner company or it may not be. **In any event the failure to file the necessary declaration has necessarily prevented the authorities to have a proper verification.**" (Emphasis added).

7) The Apex Court has observed that unless a declaration is made in Form No. 14, there is no opportunity for the authorities to verify. The Apex Court observed that the verification at the time when the raw material was still there is entirely different from a verification at a belated stage after it has ceased to be there. In the present case clause (e) of sub-rule enjoins the Appellant to make a declaration in Form 5 in respect of the goods imported by, or on behalf of, any person, mercantile firm or body which has been permitted by the Municipal Council to keep an account current under Section 142. The Form 5

contemplated by the said provision contains various particulars such as bill of entry, description of goods, quantity and value of the goods, rate of octroi etc.

8) On perusal of the plaint, it appears that apart from claiming facility of keeping a Current Account, the Appellant also claimed facility of paying Octroi duty on the rubber, valve and carbon block at the concessional rate of 1.20%. The Respondent- Corporation demanded octroi at the rate of 2.80%. In fact in paragraph No. 3 of the plaint, reliance is placed on Part 1-A of Second Schedule which gives the list of goods which, when imported by an industrial undertaking for the use as a raw material for processing within that undertaking and when a declaration in that respect is issued in Form 14, shall be subject to payment to octroi at the rate not exceeding 1.20% and not less than 0.25%. In paragraph no. 4 of the plaint, specific averments have been made that raw material was brought by the Appellant which was processed in the factory of the Appellant by a use of a chemical process. It is specifically averred in the plaint that the rubber, valve and carbon block were essential raw material to be used in the

process of manufacturing tubes. Considering this aspect of the case, the Courts below have rightly applied the ratio of the decision of the Apex Court in the case of Indian Aluminium Co. Ltd. (supra) as admittedly, no declaration has been made by the Appellant as required by Rule 14 of the said rules. In the circumstances, there is no merit in the first submission made by the learned counsel for the Appellant.

9) In so far as the second submission is concerned, I find from the copy of the plaint that there is no specific challenge to the demand on the ground that the demand was barred by law of limitation. I find that no such submission has been made in both the Courts below. In the Memorandum of appeal filed in the District Court a ground is taken on the basis of said submission. The Appellate Court in Paragraph 8 of the Judgment has reproduced the submissions made by the Advocate appearing for the Appellant. The only submission made in this regard is that as per Rule 31, a requisition ought to have been made within a period of six months. Thus, I find that the point of limitation urged in the second appeal is not at all canvassed before both the courts.

10) The rule 31 is totally different in the sense that the rule deals with expeditious disposal of an application for refund of Octroi and in that context sub rule 2 of rule 31 provides that requisitions made by the Municipal Officer has to be within a period of six months from the date of making a declaration. As the submission canvassed before me that the demand was barred by limitation is not specifically raised in the plaint and in the Courts below, the same cannot be considered for the first time in a second appeal. There is no merit in the Second Appeal.

11) Second appeal is accordingly dismissed with no order as to costs.

(A.S. OKA, J.)